IN THE

Supreme Court of the United States

OCTOBER TERM 1946.

No.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, a corporation,

Petitioner,

versus

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, and CITY OF BATON ROUGE, LOUISIANA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1946

No. .....

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, a corporation,
Petitioner,

versus

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, and CITY OF BATON ROUGE, LOUISIANA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Interstate Natural Gas Company, Incorporated, a Delaware corporation (hereinafter referred to as "petitioner" or "Interstate Company"), prays for a writ of certiorari

to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit (hereinafter referred to as "Circuit Court") entered in the above cause on August 3, 1946 (R. II. 928),[1] rehearing denied October 1, 1946 (R. II. 948), denying the petition for review of and affirming an order of the Federal Power Commission (hereinafter referred to as "Commission") issued under the Natural Gas Act (hereinafter sometimes referred to as the "Act"), by which order said Commission (i) assumed jurisdiction over certain sales of natural gas made by petitioner from its production and gathering system in the producing field, (ii) found that the rates charged for such sales were unjust and unreasonable, and (iii) ordered a reduction of the rate per M. c. f., based on the test year of 1941, from the average contract price of 7.39¢ to 4.66¢, a total reduction of $596,320.

OPINIONS BELOW.

The opinion of the majority of the Circuit Court (R. II. 910) and the dissent thereto (R. II. 919) are officially reported in 156 Fed. (2d) 949. The opinion of the Commission (R. I. 57-80) is reported in 3 FPC 416, 48 PUR (NS) 267.

JURISDICTION.

The judgment of the Circuit Court was entered August 3, 1946 (R. II. 928). Petition for rehearing was season-

[1] There are two volumes of the Record. References to the volumes and page will thus be made.

ably filed and was denied on October 1, 1946 (R. II. 948). The order of the Commission was issued April 27, 1943 (R. I. 81), petition for rehearing was filed May 18, 1943 (R. I. 93), was denied on June 9, 1943 (R. I. 100), and the petition for review was filed in the Circuit Court on June 14, 1943 (R. I. 19). A stay order was issued that same day (R. I. 20).

The jurisdiction of this Court is invoked under Section 19(b) of the Natural Gas Act (52 Stat. 821; Title 15, U. S. C. A., Sec. 717r(b)) and Section 240a of the Judicial Code as amended by the Act of February 13, 1925 (Title 28, U. S. C. A., Sections 346 and 347).

STATUTE INVOLVED.

The statute involved is the Natural Gas Act, approved June 21, 1938 (Public Act No. 688, 75th Congress, Chapter 556, 3rd Session; 52 Stat. 821; 15 U. S. C. A. §717). The pertinent provisions thereof are set forth in Appendix A, *infra*.

QUESTIONS PRESENTED.

(1) Does the rate-fixing section of the Act (Section 5(a), 15 U. S. C. A. Section 717d(a)) apply to, and does the Commission under said Act have jurisdiction to regulate the sales prices of natural gas which is produced or purchased within the same producing field in the State

of Louisiana, is gathered from the wells, and before actual transportation in interstate commerce begins is delivered from the field gathering system and sold in Louisiana to pipe line companies at their large compressor stations in the producing field in Louisiana, at which stations title passes and all control by petitioner ends, and after which such gas is compressed by the purchasers and pumped at high pressures through the purchasers' lines to points of delivery outside the State of Louisiana where the natural gas is sold for resale by said purchasers?

(2) Are the sales referred to in question (1) above "sales in interstate commerce" within the provisions and meaning of Sections 1 and 2(7) of the Act (15 U. S. C. A. Sections 717, 717a(7)) or are such sales local transactions not intended by Congress to be price-regulated by the Commission?

(3) Are the sales referred to in questions (1) and (2) above sales to which the provisions of the Act do not apply by reason of the exception contained in Section 1(b) of the Act (15 U. S. C. A. Section 717(b)) providing that:

> "The provisions of this Act . . . shall not apply to . . . the production or gathering of natural gas."

(4) Is the order of the Commission reducing the average contract price of the sales of natural gas referred to in questions (1), (2) and (3) above from 7.39¢ to 4.66¢ per M. c. f. arbitrary and unreasonable, and does the order result in confiscation of petitioner's producing and gathering property under the facts and circumstances of

this case and deprive petitioner of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States?

STATEMENT.

The Circuit Court's Decision:

The judgment of the Circuit Court, review of which is sought by this Honorable Court, was entered in a review proceeding brought by petitioner under Section 19(b) of the Natural Gas Act (15 U. S. C. A. 717r(b)) for the purpose of reversing an order of the Commission entered in a rate investigation instituted against petitioner pursuant to Section 5(a) of the Act (15 U. S. C. A. 717d(a)). The Circuit Court, Judge Waller dissenting, denied the petition for review, thus affirming the Commission's opinion and order which found that sales of natural gas made by petitioner from its producing and gathering system in the Monroe Field in Louisiana to Mississippi River Fuel Corporation [2] at the latter's compressor station, to Southern Natural Gas Corporation [2] at its compressor station, and to United Gas Pipe Line Company for account of Memphis Natural Gas Company [2] at Memphis' compressor station, all such stations being located in Louisiana within the limits of the producing field, were sales of natural gas in

[2] These purchasing pipe line companies will be referred to respectively as Mississippi Fuel, Southern Natural and Memphis Natural. Mississippi Fuel's pipe line extends through Arkansas to the vicinity of St. Louis, Missouri; East St. Louis and Alton, Illinois. Southern Natural's pipe line extends through the State of Mississippi and Alabama to the State of Georgia. Memphis Natural Gas Company's pipe line extends to Memphis and other places in western Tennessee. All three companies are natural-gas companies under the Act and their rates to distributing companies are subject to Commission regulation.

interstate commerce for resale for ultimate public consumption for domestic, commercial or other uses within the meaning of Section 1(b) of the Act (15 U. S. C. A. 717(b)) and so were subject to the rate-fixing jurisdiction of the Commission under Section 5(a) (15 U. S. C. A. 717d(a)) of the Act.

The majority opinion concurs in the Commission's finding that the sales in question are sales in interstate commerce and so are included within the jurisdiction of the Commission by the affirmative provisions of Section 1 of the Act (15 U. S. C. A. 717), and are not excluded from that jurisdiction by the "production or gathering" exception clause of Section 1(b) (15 U. S. C. A. 717(b)). The legislative direction that the provisions of the Act shall not apply to the production or gathering of natural gas was interpreted in the majority opinion as having no reference to sales made by a producer from the production and gathering system, but only to the physical activities of production and gathering and the properties used in carrying on such activities.

Petitioner's Field Operations and Sales:

All of the property of petitioner used in producing, purchasing, gathering, selling and delivering the gas to the three pipe line companies is located within the limits of the Monroe Field in Louisiana, and all the activities here involved take place in that State (R. II. 559-562, 604-606). The title to the gas sold by petitioner passes to the purchasers and all control by petitioner over the gas ceases before it starts on the interstate journey in the pipe lines of the purchasers (R. II. 577-581, 610-622).

Petitioner [3] commenced operations in 1927 (R. II. 566-568) and the contracts (R. II. 792-807) for the sale of gas under discussion were made before the Natural Gas Act was passed. Starting with a few wells and gathering lines (R. II. 566-573) petitioner's property has expanded in size so that by the test year of 1941 petitioner owned and controlled 56,556 acres (R. II. 561) of natural gas lands and mineral rights in the Monroe Field and owned and operated 110 natural gas producing wells (R. II. 561, 609) all producing natural gas from the Monroe Gas Rock. Petitioner had an extensive field gathering system (R. II. 563, 607-610) consisting of a network of various sizes of pipe to which its wells were connected and from which it made the deliveries to Mississippi Fuel, Southern Natural, and Memphis Natural (R. II. 564, 619).

During 1941 petitioner purchased gas from several producers (R. I. 526-528, R. II. 563) in the Monroe Field, which gas was taken into petitioner's gathering system at the well head or at certain points along its gathering lines (R. II. 609, 610). The gas sold and delivered to the three pipe line companies consisted of commingled produced and purchased gas (R. II. 576, 577). Petitioner and an affiliated company not here involved together supplied 22 per cent of Mississippi Fuel's total gas requirements, 16.6125 per cent of Southern Natural's gas requirements and 24 per cent of the requirements of Memphis Natural (R. II. 794). The remainder came from other producers in the Monroe Field or elsewhere in northern Louisiana (R. II. 794).

[3] A complete description of petitioner's organization, its properties and operations are found in Exhibit 3, R. I. 519-536; Exhibit 42, R. II. 559-598; Exhibit 49, R. II. 601-658; and Exhibit 57, R. II. 697-729.

Gas sold to Mississippi Fuel was delivered at its compressor station (photographs at R. II. 582-583) in the producing field at a pressure of approximately 150 pounds per square inch, delivery being made through the meter runs established for measuring the gas (photographs R. II. 584, 585). Delivery was completed when the gas flowed through Mississippi Fuel's own meters, after the gas passed through Mississippi Fuel's gate valves into a header owned by it. There the gas was commingled with gas purchased by Mississippi Fuel from other producers in the Monroe Field. The commingled gas then passed through a series of scrubbers into the suction header of the station. The gas was first compressed through a low-stage unit (photographs R. II. 586-587), and then through a high-stage unit (photographs R. II. 588) from which gas was discharged into Mississippi Fuel's trunk transmission line (R. I. 150-153, R. II. 577-578, 619). The pressure is boosted from the delivery pressure of 150 pounds to a transmission pressure of approximately 425 pounds. This compression is necessary to the movement of the gas in interstate commerce to the points of delivery and sale in Arkansas, Missouri and Illinois.

Deliveries to Southern Natural are made in the same manner (R. I. 154) and are at a delivery pressure of 150 pounds per square inch. The gas moves through meters, is commingled with other gas, passes through scrubbers, and is compressed by Southern Natural through low and high pressure stage units to approximately 450 pounds. The gas is discharged into Southern Natural's main trunk pipe line for transportation in interstate commerce and for sale in Mississippi, Alabama and Georgia (R. II. 578-579, 619; photographs at R. II. 590-592).

Gas is delivered to Memphis Natural at its compressor station and substantially the same processes of delivery and compression take place with subsequent transportation by Memphis Natural of the gas to points in Arkansas and Tennessee (R. II. 580, 620; photographs R. II. 593-595). In each instance the gas is delivered by petitioner at the natural pressure resulting from the well pressure without any mechanical compression or boosting being done by petitioner whatsoever (R. II. 577-580).

All of the three pipe line companies are engaged in the sale of such gas after its transportation in interstate commerce to distributing companies for resale to consumers of all classes (R. II. 619, 620).

The Facts of Confiscation:

In the exercise of its purported jurisdiction the Commission used the rate base and cost of service method as applied in previous cases (R. I. 63, 64). It found the original cost of the gas rights, the producing wells and the gathering system (R. I. 831). After the deduction of depreciation and depletion (R. I. 67) it allowed a return of 6½ per cent on the original cost rate base (R. I. 70, 72), thus excluding all consideration of discovery value. The actual price paid to other producers by petitioner for gas purchased in the same Monroe Field was allowed in full (R. II. 829), although in excess of the well-mouth price allowed petitioner under the Commission's method. The average price paid to other producers was 5.44¢ per M. c. f. (R. I. 526, 563; R. II. 829). The total costs, including gathering costs, were then converted to an average cost of 4.66¢ per M. c. f. (R. II. 827) for gas sold and delivered

from the production and gathering system of petitioner. The contract price of an average of 7.39¢ per M. c. f. (R. II. 827) was ordered reduced to the Commission-fixed price of 4.66¢.

Petitioner's Other Operations:

In addition to the sales here under consideration petitioner makes sales, subject to the Natural Gas Act, from a trunk pipe line system which originates at DeSiard Compressor Station in the Monroe Field, extends southeasterly through Louisiana, crossing the Mississippi River near Natchez, Mississippi, and thence through Mississippi to Baton Rouge, Louisiana (R. II. 627-631; Map R. II. 624). Sales from that pipe line to distributing companies for resale admittedly were subject to Commission regulation (R. I. 58) and the rate reduction order as to such sales (R. I. 79, 80, 101) was finally accepted by petitioner and is not here for review (R. I. 10). Gas sold from that main trunk line is delivered to the DeSiard Station from petitioner's production and gathering system in much the same manner (R. II. 581) as the gas sold to Mississippi Fuel, Southern Natural and Memphis Natural is delivered to their compressor stations. The average field price allowance of 4.66¢ per M. c. f. was accepted by Interstate for its own main line sales under the rule of *Canadian River Gas Company v. Federal Power Commission*, 324 U. S. 581, 89 L. ed. 1206. The operations of petitioner's main truck pipe line system bring it under the Natural Gas Act as a "natural-gas company". Those operations are not here involved and were not used by the Commission or the Circuit Court as a reason for the order and

judgment sought to be reviewed. Reference to those jurisdictional operations of petitioner will not further be made.

REASONS FOR GRANTING THE WRIT.

(1) The Circuit Court has decided important questions of Federal law arising under the Natural Gas Act which have not been but should be settled by this Court.

No greater controversy has arisen during the eight years of regulation under the Natural Gas Act than that now presented to this Court. The extent of the Commission's jurisdiction over production and gathering has caused extensive controversy ever since the question was first presented for Commission decision in the case of *In re Columbian Fuel Corporation*, 2 F. P. C. 200, 35 PUR (NS) 3. There the Commission held the sales made to an interstate pipe line to be beyond its regulatory reach when made in the producing field from the gathering system of Columbian.

The decision presented for review is the only other one made by the Commission which involves a sale of gas in the field where produced to an interstate pipe line which in turn transports the gas in interstate commerce and sells it for resale under regulable rates. By this decision the Commission departed from its previous ruling in the *Columbian* case by holding that the sales here made by petitioner were made in interstate commerce and that

the exemption provided for production and gathering did not relate to sales even though made from a production and gathering system (R. I. 58-62).

That this extension of jurisdiction by the Commission, now approved by the Circuit Court, is of great concern to the producers in Texas, Louisiana, Oklahoma and Kansas, has been evident during the recent general natural gas investigation of the Commission under its Docket No. G-580. (See also "Effects of Federal Regulation under the Natural Gas Act upon the Production and Conservation of National Gas", George Washington Law Review—Special Issue on Federal Power Commission—December, 1945, Volume 14, No. 1, pp. 217 et seq.)

This Court had under consideration one aspect of the jurisdiction of the Commission over the production and gathering of natural gas in the case of *Canadian River Gas Company v. Federal Power Commission*, 324 U. S. 581, 89 L. ed. 1206. In that decision by Mr. Justice Douglas, concurred in by three other Justices, it was held that the Commission could include production and gathering property in the rate base of a natural gas company in arriving at reasonable rates for gas sold to distributing companies for resale. In speaking of the restrictions imposed by Section 1(b) of the Act the Court said:

> "That does not mean that the part of Section 1(b) which provides that the Act shall not apply 'to the production or gathering of natural gas' is given no meaning. Certainly that provision precludes the Commission from any control over the activity of pro-

ducing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like. It may put other limitations on the Commission. We only decide that it does not preclude the Commission from reflecting the production and gathering facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purposes of determining the reasonableness of rates subject to its jurisdiction." (602-603.)

Four Justices dissented and Mr. Justice Jackson concurred in an opinion in which he stated:

"It is true that the Act excludes 'production or gathering of natural gas' from jurisdiction of the Commission. If the Commission had imposed any direct regulation upon that activity, I would join in holding it to have exceeded its jurisdiction. But the orders in question have no immediate 'impact' upon production or gathering of gas.

"The statute commands the Commission to regulate the price of natural gas transported and sold at wholesale in interstate commerce for resale. The Commission has investigated the fiscal aspects of production and gathering because of their bearing on the reasonableness of interstate rates. I suppose a commission is free to take evidence as to conditions and events quite beyond its regulatory jurisdiction where they are thought to affect the cost of that whose price it is directed to determine. This, as I see it, is all that has been done here." (609.)

Clearly the jurisdictional point here presented has not been settled by this Court. Whether the sales here involved are subject to the Commission's jurisdiction, and if so, does that same jurisdiction extend to the thousands of producers, large and small, selling gas to interstate pipe lines, is the most important pending controversy remaining unsettled after eight years under the Natural Gas Act. An authoritative interpretation of Sections 1 and 2(7) are badly needed to allay doubt, distrust and confusion as to what is the jurisdiction of the Commission over producer sales. This Court can render no greater service to the natural gas industry at this time than to take this case for decision.

(2) The Circuit Court has decided Federal questions under the Natural Gas Act in a way probably in conflict with applicable decisions of this Court.

In deciding that these sales were made in interstate commerce, the Circuit Court relied upon two cases: *Missouri v. Kansas Gas Co.*, 265 U. S. 298, 68 L. ed. 1027; and *P. S. C. v. Attleboro Steam & Electric Co.*, 273 U. S. 83, 71 L. ed. 549. That those cases both involved transportation across or to a State line by the Seller is known to all who have read them. They do not touch upon a sale made by a gas producer in the producing field to a separate entity which transports and sells the gas in another State.

The sales made here being of gas produced and delivered locally clearly are intrastate *in fact*, being completed in Louisiana. They are not made interstate by any legal

doctrine of this Court. Sales of commodities under similar circumstances have been held to be intrastate transactions and subject to local control.

Hope Natural Gas Co. v. Hall, 274 U. S. 284, 71 L. ed. 1049;
Superior Oil Co. v. State of Miss., 280 U. S. 390, 74 L. ed. 504;
Milk Control Board v. Eisenberg Co., 306 U. S. 346, 83 L. ed. 752;
Treasury of Indiana v. Wood Preserving Corp., 313 U. S. 62, 85 L. ed. 1188.

The viewpoint taken by this Court in *Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 282, 66 L. ed. 239, of a sale made in a State for immediate shipment by common carrier to a destination in another State does not apply to the facts here presented. That case and the North Dakota grain cases (*Lemke v. Farmers Grain Co.*, 258 U. S. 50, 66 L. ed. 458, Justices Brandeis, Holmes and Clarke dissenting; *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 69 L. ed. 909), based upon it, have been severely limited by the more recent decisions of this Court cited above. (See also *Townsend v. Yeomans*, 301 U. S. 441, 81 L. ed. 1210; and *California v. Thompson*, 313 U. S. 109, 85 L. ed. 1219.)

(3) The Circuit Court has so far departed from the accepted and usual course of judicial procedure as to call for an exercise of this Court's power of supervision.

In making its interpretation of the meaning to be given to the exemption of production and gathering in Section

1(b) of the Act, the Court arbitrarily excluded all legislative history relating to the so-called Lea Bill, H. B. No. 11662, a predecessor bill to the Natural Gas Act (R. II. 916). In completely disregarding this legislative history the Circuit Court followed a course of judicial procedure completely contrary to that approved by this Court in considering and passing upon the Natural Gas Act. For example, in the case of *Federal Power Commission v. Hope Natural Gas Company*, 320 U. S. 591, 88 L. ed. 333, the majority opinion made reference to hearings on H. R. 11662, Sub-Committee of House Committee on Interstate and Foreign Commerce, Seventy-fourth Congress, Second Session. The same legislative history was referred to by the late Chief Justice Stone in his dissent in the case of *Canadian River Gas Company v. Federal Power Commission, supra* (See footnote 2, 324 U. S. 581 at 621). Legislative history of bills preceding the enacted Federal Power Act was likewise used in the opinion of Mr. Justice Jackson in *Connecticut Light and Power Co. v. Federal Power Commission*, 324 U. S. 515, 89 L. ed. 1150.

Petitioner raised the issue of confiscation of its production and gathering property resulting from the use of the cost of service method for petitioner's own produced gas, although allowing the field contract price for purchased gas. The summary way in which the Court dealt with the issue of confiscation (R. II. 912-913) has effectually denied to petitioner any judicial review whatsoever on the impact which the Commission order has on petitioner. The total effect of the rate order as it relates to petitioner's production and gathering property was not made the subject of judicial inquiry by the Court. This is a denial of the

rights granted the petitioner under Section 19(b) of the Act.

CONCLUSION.

For these reasons, stated more fully in the attached memorandum brief, it is respectfully submitted that the writ should be granted.

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MEMORANDUM BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

OPINIONS BELOW.

Reference to the opinions of the Commission and of the Circuit Court is made in the petition at page 2.

II.

JURISDICTION.

The statutory provisions under which the jurisdiction of this Court is invoked are shown in the petition at page 3.

III.

STATEMENT OF THE CASE.

This appears in the petition, pages 5-11.

IV.

SPECIFICATION OF ERRORS TO BE URGED.

Errors to be urged are those specified in the petition, pages under the heading "Questions Presented."

V.

ARGUMENT.

(1) The sales of natural gas made by petitioner from its production and gathering system to Mississippi Fuel, Southern Natural and Memphis Natural are not subject to the jurisdiction of the Commission, not being sales of natural gas in interstate commerce.

The issue on this point is clear since both the Commission and the Circuit Court have characterized as interstate transactions the sales of gas produced or purchased in Louisiana, gathered from the wells in Louisiana, delivered to the pipe line companies in Louisiana, and to which title passes and over which all control by petitioner ends in Louisiana. These conclusions are based solely on two cases, *Missouri v. Kansas Gas Company*, 265 U. S. 298, 68 L. ed. 1027; and *Public Service Commission v. Attleboro Steam and Electric Company*, 273 U. S. 83, 71 L. ed. 549. Neither of these cases involves a sale of natural gas made in the producing field. In the *Kansas Gas Company* case the Missouri Commission was attempting to regulate a sale of gas to a distributing company in Missouri, made by a pipe line company after transporting the gas from Oklahoma and Kansas. That decision has no bearing whatsoever on the question here for consideration.

In the *Attleboro* case there was a sale at wholesale by a Rhode Island company to a Massachusetts distributing company wherein the former undertook to transport to, and deliver, electric current at the State line, which transaction was held to be one "in interstate commerce".

Clearly, transportation to and the sale at the State line to a connecting company which then distributed the electricity in Massachusetts has none of the characteristics of the sales of gas by petitioner here involved. The essence of the question depends upon what the Natural Gas Act defines as a sale in interstate commerce. Section 1(a) declares that:

> ". . . the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

Nothing is said here indicating that a local sale in the field is something that needs to be regulated.

The provisions of Section 1(b) make the Act applicable:

> ". . . to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale. . . ."

Leaving out of consideration for the moment the subsequent restrictive provisions of the paragraph, it is clear that the sale must be in "interstate commerce" before it is within the jurisdiction of the Commission. Turning to Section 2(7) which defines interstate commerce, there is the requirement that it must be commerce ". . . between any point in a State and any point outside thereof . . ." Judge Waller in his dissent relied upon that definition and pointed out clearly that the majority of the Circuit Court had failed to give it any consideration whatsoever. From a determination of Section 1 and of the definition

of interstate commerce, a sale to be subject to Commission jurisdiction of necessity must take place after the gas has moved from the State of production and into another State. By this language Congress intended that sales made to distributing companies after the transportation from the State of production were the ones that should be regulated. (See Senate Report 1162, Seventy-fifth Congress, First Session, to accompany H. R. 6586 for the committee views that sales to distributing companies are the ones which the Supreme Court had held States could not regulate.)

The division between State and Federal control over the natural gas business is not a new legal concept. Before the Natural Gas Act was passed the State exercised full control over natural gas within their borders. Taxation of natural gas produced in West Virginia, although destined from the well to markets in Pennsylvania and Ohio was sustained by this Court in *Hope Natural Gas Company v. Hall*, 274 U. S. 284, 287-288, 71 L. ed. 1049, and in *Superior Oil Company v. Mississippi*, 280 U. S. 390, 74 L. ed. 504, a State tax on sales of gasoline made in Mississippi, although to be transported outside the state, was upheld. There the Court said that the parties could not by contract "convert what was exclusively a local business, subject to State control, into an interstate business protected by the commerce clause" (pp. 394-395).

There have been a variety of State regulatory actions sustained in the exercise of the conservation powers which have uniformly been upheld by this Court even though the oil or gas produced was intended to be, and in fact was,

immediately shipped in interstate commerce. Illustrations of the exercise of this power are found in *Champlin Refining Company v. Corporation Commission*, 286 U. S. 210, 76 L. ed. 1062, *Railroad Commission of Texas v. Rowan & Nichols*, 310 U. S. 573, 84 L. ed. 1368. Price fixing of oil or gas sales made in the producing field, followed by immediate transportation in interstate commerce, has never been directly passed upon by this Court, but price control of milk sold locally in Pennsylvania and immediately transported to New York has been sustained. *Milk Control Board v. Eisenberg*, 306 U. S. 346, 83 L. ed. 752, involved a sale of milk at a receiving station in Pennsylvania from which milk was loaded into tank trucks and taken by a continuous journey to New York. Local regulations and price-fixing provisions of the State law were upheld on the ground that these transactions were essentially local in Pennsylvania. An analogous situation involved the sale of railroad ties in the State of Indiana which was held to be a local transaction even though the ties were delivered and forthwith loaded on railroad cars for destinations in Ohio for treatment, *Treasury of Indiana v. Wood Preserving Corp.*, 313 U. S. 62, 85 L. ed. 1188 (see also cases referred to in petition, pp. 14-16).

Factually the sale is a local intrastate sale since the seller does nothing in moving the gas outside the State. The facts of delivery have been set forth with some detail in the petition, pages 6-9. Those facts demonstrate that after control of the gas has passed from petitioner to the pipe line companies several things are done in packaging and preparing the gas for its movement in interstate commerce. Without the compressor stations this gas could

not be taken to market, and when greater pressure is placed upon the gas, of necessity it occupies a smaller volume than it did before.

That the act of compression has some features of a local intrastate transaction is exhibited by the case of *Coverdale v. Arkansas-Louisiana Pipe Line Company*, 303 U. S. 604, 82 L. ed. 1043. In that case a natural gas company producing gas in Louisiana owned a compressor station which was utilized in increasing the pressure of natural gas for the purpose of transporting it to another State. A Louisiana tax on "prime movers" was resisted by the pipe line company on the ground that the tax was a burden upon interstate commerce. This Court, Mr. Justice McReynolds dissenting, in an opinion by Mr. Justice Reed, held that the tax was valid. The tax was not imposed upon the act of moving the gas but of generating the power, and even though the compression end of the unit was engaged in starting the gas on its interstate journey, nevertheless the power production by the engine was held to be a local event subject to taxation. This case is based on the concept that only after the gas moves from the compressors on its journey outside the State does interstate commerce begin, and that, of course, conforms to the definition of interstate commerce in the Natural Gas Act.

The scope of Federal authority to regulate the natural gas business and the power of Congress to regulate the particular sales here involved is not necessary to be considered. The Act, unlike other Federal acts of the same period, does not purport to regulate transactions which

affect, or which are intimately related to, interstate commerce. The much more restricted phrase "in interstate commerce" is used. The Federal power is not disputed. Therefore, such cases as *Currin v. Wallace*, 306 U. S. 1, 83 L. ed. 441, and *United States v. Rock Royal Co-Op.*, 307 U. S. 533, 83 L. ed. 1446, are not applicable here.

Since only transactions actually "in interstate commerce" are placed under the Act, this means that only those transactions which are not constitutionally subject to State control are placed under the jurisdiction of the Commission. A transaction subject both to State and Federal regulation was not intended by Congress to be placed under the authority of the Act since there was no absence of regulatory power in the States. This is clearly expressed in the report of both committees of Congress[4] and has been recognized by this Court in two cases:

In *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U. S. 498, 86 L. ed. 371, the Court said (314 U. S. 506-7):

> "An avowed purpose of the Natural Gas Act of June 21, 1938, was to afford, through the exercise of the national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, *which this Court had declared to be interstate commerce not subject to certain types of state regulation* . . . the Act is restricted in its application 'to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of

[4] The Senate and House Committee reports are identical. See Senate Report No. 1162, Seventy-fifth Congress, First Session, to accompany H. R. 6586.

> natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale. . . .'" (Italics supplied.)

In a subsequent case denying the power of the Public Utilities Commission of Ohio to fix the price at the city gate of gas transported from West Virginia and sold in Ohio, the Court said:

> "It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, *to the extent defined in the Act, and local matters would be left to the state regulatory bodies.* Congress contemplated a harmonious, dual system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere." (Italics supplied.) (*P. U. C. v. United Fuel Gas Company*, 317 U. S. 456 at 467, 87 L. ed. 369.)

The two cases last cited dealt with State authority over the transportation and sale of natural gas in the State of destination after the gas had moved from the State of production across State lines into the State of destination. These are the only cases so far decided by this Court dealing with the power of the State governments over sales of natural gas having any connection with an interstate pipe line. All other cases under the Natural Gas Act which this Court has considered have been re-

views of rate orders reducing the prices charged by pipe lines at the city gates after transportation from the producing field was completed. In order that the sales of petitioner to the three pipe line companies be sales "in interstate commerce" within the meaning of the Act, such sales would have to be free from State regulation because of Constitutional prohibitions under decisions of this Court. We believe that the authorities hereinabove referred to demonstrate that the sales in question are of a local character, and that the Circuit Court committed manifest error in holding these sales subject to the Commission's jurisdiction. Without question, there has been no determination of this point by this Court, which is the only tribunal that can finally settle the dispute about the correct interpretation of Section 1 of the Act.

(2) The exemption of production and gathering by Section 1(b) of the Act excludes the application of Section 5(a) to petitioner's sales.

As stated in the petition, pp. 12-13, this Court had before it in the *Canadian River* case one phase of the interpretation of the exception of Section 1(b) of the Act stating that its provisions shall not apply to the production or gathering of natural gas. We pointed out that all questions were reserved by the Court for future consideration save the one there decided. Since only four Justices joined in the majority opinion, it is evident that even that interpretation was not commanding in its appeal. We now bring to this Court the specific application of the exemption in a case in which the impact upon production and gathering is so severe as to amount to confiscation. The meaning

and reach of the exemption of production and gathering has such far reaching results that this Court should set forth its judgment in this case.

The exemption was put there for a purpose. That purpose was to exclude jurisdiction of the Commission. To interpret it narrowly, as does the Circuit Court majority, is to make its inclusion needless. Even without these words, the Commission could not have exercised any control over the drilling of wells or other local activities. We urge upon this Court that it consider the dissenting opinion of the later Chief Justice in the *Canadian* case as our argument here. Adding to that the dissent of Judge Waller, we have a sound and logical presentation upon which we cannot improve.

Consider also the concurring opinion of Mr. Justice Jackson in the *Canadian* case, where, in speaking of this exemption, he said (324 U. S. 609):

> "If the Commission had imposed any direct regulation upon that activity, I would join in holding it to have exceeded its jurisdiction."

No more direct regulation could be imposed than the reduction of the sales price from 7.39¢ to 4.66¢ per M. c. f.

The Legislative History:

The Circuit Court has discarded all legislative history except the report of the Senate and House Committee (R. II, 917). This Court has used that discarded material in its search for the true meaning intended by Congress in enacting this law. We refer to it here at some length

so that we may demonstrate how conclusively it proves our case.

The Enactment of the Natural Gas Act:

The first proposal for the regulation of the sale and transportation of natural gas in interstate commerce was introduced in Congress in 1936. Subsequent bills were substituted and later new proposals were introduced before the final enactment of the Natural Gas Act in 1938. The legislative history of all of these measures is pertinent to the problem of interpretation now presented to the Court.

(a) Bill Proposed in 1936—Lea Bill:

Within three months following the submission of the Federal Trade Commission's Final Report, bills to regulate natural gas were introduced into both House and Senate. These were H. R. 11662 and S. 4480 (74th Congress, 2nd Session). The House bill is commonly referred to as the Lea bill.

As introduced, the Lea Bill in large measure reflects the report of the Federal Trade Commission. It is obvious that, in H. R. 11662, the House Committee had formulated a definite policy to exclude from Federal regulation certain phases of the natural gas business even though such phases might be regulated as a part of or as affecting interstate commerce.

The nature and extent of this exclusion is shown by the explanations given by committee members and others given in the hearings and debates. These we fully explore below.

(b) The Controlling Explanation Given at the Hearings on H. R. 11662:

H. R. 11662 had, in large measure, been drawn by two members of the Federal Power Commission staff, who had been loaned to the House Committee for this purpose, Mr. Dozier A. De Vane, the Solicitor of the Commission, and Mr. Thomas J. Tingley, its Assistant Solicitor.

In April of 1936, the House Committee on Interstate and Foreign Commerce held public hearings with respect to H. R. 11662, and Chairman Lea called Mr. De Vane to testify as the first witness and explain the bill. The importance of this testimony cannot be overlooked and the opening remarks show the authority with which the witness spoke.

The opening remarks were as follows (Record of Hearings on H. R. 11662, page 9):

"Mr. Lea:

"It is the intention of the committee first to hear the representatives of the Federal Power Commission and the Federal Trade Commission. Before the hearings are completed we hope to hear from interested parties as largely as is necessary to cover the subject.

"At this time we will hear Mr. De Vane, representing the Federal Power Commission.

"Mr. De Vane, you may proceed in your own way.

"Mr. De Vane:

"Mr. Chairman and members of the Committee, my name is Dozier A. De Vane. I am solicitor for

the Federal Power Commission and have been in that position now for approximately two and a half years. I appear here this morning at the request of the Chairman of your full Committee and of your Subcommittee, and that the record may be clear, may I also state that I do not appear in the capacity of a representative of the administration in connection with any legislation that it has submitted to the Congress.

"This committee will recall that as a part of H. R. 5423 was title III, which had for its purpose the regulation of this industry.[5]

"Title III of that bill was substantially the same in language as the part of title II that related to the regulation of the electric industry.

"Substantially the only difference was that gas was substituted for electricity in the language of the bill.

"After the hearings upon that bill, titles II and III—when I refer to title II, I mean that part of the bill providing for an amendment to the Federal Water Power Act bringing under Federal regulation electric utilities—both that title and title III, which provided for the regulation of the natural-gas industry was referred to the same subcommittee and considered by the same subcommittee.

"I suppose it is not out of place if I should say for the record here that title III, which related to the regulation of the gas industry was not reported out with title I and title II.

"The bill that you have now, H. R. 11662, is in substantially all respects, insofar as it goes, similar

[5] The reference is to the Public Utility Holding Company Bill, introduced by Mr. Rayburn in 1935.

to the provisions of the Federal Power Act with reference to the electric industry. The bill itself does not go quite as far as nor does not confer quite as much jurisdiction upon the Commission as does the Federal Power Act.

"I shall not, in my presentation this morning, undertake to discuss the gas industry, as this committee knows an investigation with reference to that subject has been made by the Federal Trade Commission under Senate Resolution 83, Seventieth Congress, first session, and a representative of that Commission will appear and present to the committee factual data that were developed by that investigation."

After some additional opening remarks and the presentation of a legal brief discussing the provisions of the bill, Mr. De Vane proceeded to discuss the bill orally and commenced as follows, (*ibid*, page 24):

"Mr. De Vane:

"Section 1(a) of the bill is a declaration of the necessity for Federal regulation. It recites the investigations that have been made, points out that this industry has now reached a point where Federal control and regulation of the industry is necessary.

"Section 2 defines the jurisdiction—

"Mr. Merritt:

"Mr. Chairman.

"Mr. De Vane (continuing):

"Section 1(b) defines the jurisdiction over the industry.

"Mr. Merritt wanted to ask you a question.

"Mr. Merritt:

"I thought you were going to skip that. That is what I wanted to ask about.

"Mr. De Vane:

"No, sir. Section 1 (b) provides that the provisions of this act shall be applicable to the transportation of natural gas in high-pressure mains in interstate commerce and to natural-gas companies engaged in such transportation, but shall not apply to the distribution of natural gas in low-pressure mains or to the facilities used for such distribution or to the production of natural gas.

"Mr. Merritt:

"Well, facilities for such distribution refer only to low-pressure distribution, does it?

"Mr. De Vane:

"It refers to distribution of natural gas to consumers.

"The whole purpose of this bill is to bring under Federal regulation the pipe lines and to leave to the State commissions control over distributing companies and over their rates, whether that gas moves in interstate commerce or not."

After some little discussion as to the scope of this first exemption, the record continued as follows (*ibid*, p. 28):

"Mr. De Vane:

"* * * Now, Section 1(b) also provides that the Commission shall have no jurisdiction over the gathering or gathering rates for natural gas.

"Mr. Cooper:

"What do you mean by gathering rates?

"Mr. De Vane:

"The rates that are paid in the gathering field, Mr. Cooper."

Thereafter, Representative Cole inquired further into the meaning of Section 1(b) (*ibid*, p. 32):

"Mr. Cole:

"* * * in order to determine the cost of the property which you say is absolutely essential before you can go into the establishment of reasonable rates or charges, the Commission will go into not only the great Panhandle field of Texas and other gas fields, but into the old fields as well, where, of course, there is gas?

"Mr. De Vane:

"No; I am not so sure that would be correct. The jurisdiction conferred by this bill is limited to the transportation lines and transportations.

* * * * * *

"Mr. Cole:

"Does this bill give anywhere the Commission power over the source of natural gas in the different fields in a manner which we might call comparable to that which your Commission now has over hydroelectric generating plants?

"Mr. De Vane:

"It does not; no. It does not attempt to regulate the gathering rates or the gathering business. Section 11, I believe it is, of the bill deals with that.

"Mr. Cole:

"I do not want to disturb the continuity of your presentation, section by section.

"Mr. De Vane:

"Well, I will get to that in a few minutes. But Section 11 deals with State compacts, not in the sense of prescribing what State compacts should be but simply gives to the Commission authority to investigate and report to the Congress upon the State compacts that are submitted for approval. But the bill itself does not attempt to regulate either the gathering end or the distributing end of the business; I mean the local distribution of gas."

Subsequently in the hearing Chairman Lea again pressed for a statement as to the scope of the "production" exemption (*ibid*, pp. 42-43):

"Mr. Lea:

"Mr. De Vane, I would like to go back just a moment. Of course it is a question of regulation. Suppose that the A company owns a gas supply and the B company transmits it into another State, distributes it to a local company for distribution. Now suppose the question arises as to whether or not the charges which the A company makes against the B company for the gas is reasonable. What, if any, authority would the Commission have on that question, under this bill?

"Mr. De Vane:

"Yes, if I understand your question, concerning the price paid to the A company, *there is no control of the gathering rate; the Commission would have no jurisdiction.* That price is fixed by competitive conditions that exist in the field. But it matters not how many different ownerships there may be between the time the gas starts to move in interstate commerce and gets to the city gates. Ownership might change a dozen times—A com-

pany sell to B, and B company sell to C—all those rates would be subject to regulation. (Italics supplied.)

"Mr. Lea:

"Well, when the supply company is brought before the Commission in an action to regulate its rates, and they say, 'We have got to pay so much for gas; we cannot control that price which they charge us, and we have to charge a higher price delivered to the Buyer.' Does the Commission have any power over that?

"Mr. De Vane:

"No; not the price that is paid to the gatherer, to the man who produces it; that is binding if the transaction is at arm's length. If the transaction is not at arm's length of course its reasonableness may be inquired into under the decisions of the Supreme Court."

(c) The Revised Natural Gas Bill of 1936—H. R. 12680:

Following its hearings on the bill, the House Committee on Interstate Commerce revised the bill, and it was reintroduced on May 12, 1936 as H. R. 12680 of the 74th Congress, 2d Session.

Section 1(a) of the bill remained substantially unchanged. But Section 1(b) was revised considerably, and it is of particular interest that, in the light of Mr. De Vane's testimony, the Committee broadened the exemption for the "*production* of natural gas" to the more inclusive language "*production or gathering* of natural gas". The revised section read as follows:

"(b) The provisions of this Act shall apply to the transportation of natural gas in interstate com-

merce, to the sale of such gas for resale to the public, and to natural gas companies engaged in such transportation or sale, but shall not apply to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas: Provided, that nothing in this Act shall be construed to authorize the Commission to fix the rates or charges to the public for the sale of natural gas distributed locally or for the sale of natural gas for industrial use only."

No action was taken in the 74th Congress with respect to H. R. 12680.

(d) The Completed Bills of 1937 and Final Passage:

Early in 1937, Chairman Lea again introduced the bill in form identical with H. R. 12680 of the preceding Congress. This was designated H. R. 4008, 75th Congress, 1st Session.

Hearings on H. R. 4008 were held by the House Committee during March of 1937, the bill was further revised, and in April of 1937 was re-introduced as H. R. 6586.

Section 1(a) of H. R. 6586 was substantially identical with that of the previous bills. Section 1(b) was revised to read substantially as it does in the Act as passed.

The bill was debated in the House of Representatives on June 16, 1937 and was passed on July 1, 1937. It was then sent to the Senate, and was reported out of the Senate Committee on Interstate Commerce without change. Senator Wheeler brought the bill up for consideration on

August 14th and 19th, but each time, after some debate, it was passed over for additional study. On June 7, 1938 the bill was again brought up by Senator Wheeler, and it was passed with certain amendments. The amendments were modified at the instance of the House of Representatives and the bill was finally passed on June 14, 1938.

(e) Explanatory Statement Made in the Congressional Debates:

The course of the debates shows clearly that the members of the House and Senate, in particular the Committee having charge of the bill, shared Mr. De Vane's conception that the Act excludes field sales of natural gas.

During the debate on July 1, 1937, (Congressional Record, Volume 81, p. 8675, (Part 6, p. 6721)) Chairman Lea, as the sponsor of the bill, explained its terms to the House. In the course of this explanation, he stated:

> "There are, however, some situations defined in the bill to which this regulation does not apply. One is local distribution on the principle that where commerce passes in interstate commerce and reaches the point of broken package, the local State commission then has the regulatory power. The same general rule applies to the transportation and sale of gas. So this act does not affect the local distribution of gas. It affects the local consumer's price only by regulating the price at the city gates. The facilities for local distribution are not within the power of regulation provided in the bill.
>
> "The bill does not apply to the production and gathering of gas."

Note particularly Chairman Lea's statement to the effect that the Act affects the local consumer's price only in one respect, i. e., by regulation of city gate prices; also Chairman Lea's emphatic reiteration of the Act's exclusion of production and gathering.

Representative Halleck of Indiana, likewise a member of the House Committee on Interstate Commerce, followed Mr. Lea with additional explanations of the bill (Congressional Record, Volume 81, p. 8677, (Part 6, p. 6723)). He said in part:

> "* * * Gas is brought from the producing areas in these pipe lines and sold at the city gates to the public utilities which distribute the gas to the consumers. It is obvious the distribution of the gas by the local distributing company is subject to State regulation and the interests of the consumers are protected by State regulation. However, the transportation of gas in interstate commerce in the pipe lines and its sale to the distributing companies for resale is not subject to State regulation, and as a result, we have had a situation under which the price charged the distributing company at the city gate has been fixed wholly by the judgment, discretion, or action of the interstate company. It is charged that in many cases that price is excessive. This bill seeks to regulate those prices."

In the Senate on August 19, 1937 (Congressional Record, Volume 81, (11981) Part 8, p. 9312) the following discussion took place between Senator Wheeler, Chairman of the Senate Committee, and Senator Austin:

> "Mr. Austin:
>
> "Mr. President, may I ask the Senator from Montana (Mr. Wheeler) a question concerning this bill?

Does the bill undertake to regulate the production of natural gas, or does it undertake to regulate the producers of natural gas?

"Mr. Wheeler:

"It does not attempt to regulate the producers of natural gas or the distributors of natural gas; only those who sell it wholesale in interstate commerce.

* * * * * *

"Mr. Austin:

"Is the bill limited in its scope to the regulation of transportation?

"Mr. Wheeler:

"Yes; it is limited to transportation in interstate commerce, and it affects only those who sell gas wholesale."

Additional statements of Senator Wheeler in the course of the above Senate debate (Vol. 81, p. 11984, Part 8, p. 9315) are:

"The Federal Power Commission will have power to regulate the price of gas shipped and sold at wholesale in interstate commerce, and so they will investigate and find out what is a fair price for it. * * *

* * * * * *

"Simply because of the fact that under the bill, if the gas is shipped in interstate commerce, the Federal Power Commission has the right to investigate and say whether or not the company which ships it charges a fair rate for the wholesale gas which it is selling to the city of Columbus or the city of Cleveland. * * *"

(f) Conclusions as to Legislative History:

From the above review, it is conclusively shown, we submit, that "the production or gathering of natural gas" is a term of broad significance, and that, by employing it in contradistinction to the "business of transporting and selling natural gas in interstate commerce", Congress intended to exclude from the purview of the Act the whole business of producing and gathering gas, i. e., the drilling, maintenance and operation of wells, the movement of gas through the field gathering lines to the main interstate trunk pipe lines and the sale and delivery of the gas to those pipe line customers—in short, everything antecedent to the main interstate operation of taking the gas out of the fields to distant markets.

Such is indubitably the sense in which the exemption is understood and employed by Chairman Lea, Representative Cole, Mr. De Vane, and others responsible for the drafting of the legislation, for, in referring to it, they speak repeatedly of the "gathering companies", the "price paid to the gatherer", the "gathering rate" all as being exempt. And the conclusion becomes doubly certain in the light of the repeated statement that the purpose of the Act is not to regulate the entire realm of interstate commerce but only the "pipe line" or "transportation" phase of the business.

(3) The Issue of Confiscation and the Failure of the Circuit Court to afford petitioner a judicial review thereon.

Petitioner recognizes that this Court in a number of cases has upheld Commission action in using the rate base

method for fixing an allowance for gas produced by a natural gas pipe line company. Those cases convinced petitioner that it should accept the Commission order fixing rates of gas sold from its trunk pipe line—rates not here involved. But the application of the rate base method to the field sales of petitioner presents as an end result an instance of arbitrary action and confiscation as clear and shocking as can be imagined. If this order stands unreversed then petitioner will be compelled to sell gas to the three pipe line companies for 4.66¢ per M. c. f. This is a price less than the average price *paid* by petitioner for substantial quantities of gas in the Monroe Field.

In 1941 petitioner purchased 22,655,322 M. c. f. (R. I. 526-563) at a total cost, including expenses incurred in purchasing the gas, of $1,246,344.30, an average cost of 5.5¢ (R. II. 829).

The allowance of 4.66¢ includes the cost of gathering, so that the actual well head price allowed petitioner is approximately 2.72¢ as computed by the Commission staff (R. II. 829-830).

The Court gave brief consideration to petitioner's contention and, although recognizing that the rate order must be viewed in its entirety, no findings were made and no adequate review was given to petitioner on this vital question. The Court even stated that "Disposing first of the question of compensation, we need not inquire whether, if it stood alone, the rate allowed would be confiscatory." (R. II. 913.)

No occasion fits more closely within the framework of the "end result" or "impact" theory than does this one.

VI.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

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APPENDIX A.

Pertinent Provisions of the Natural Gas Act.

Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(52 Stat. 821, 15 U. S. C. A. §717.)

Sec. 2. When used in this act, unless the context otherwise requires—

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the

foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

(52 Stat. 821, 15 U. S. C. A. §717a.)

Sec. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State,

municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or not the lowest reasonable rates.

(52 Stat. 823, 15 U. S. C. A. §717d(a)).

Sec. 19. (a) * * * *

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has it principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall

forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(52 Stat. 831, 15 U. S. C. A. §717r (b).